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PEELE *v.* BRIGHT.

June 8, 1916.

[89 S. E. 238.]

**1. Master and Servant (§ 332 (3)\*)—Instructions—Withdrawing Issues—Injuries to Servant—Independent Contractors.**—Where the evidence tended to show that plaintiff was defendant's servant, even if it was susceptible of the interpretation that he was an independent contractor, an instruction withdrawing the issue of employment is properly refused; the question whether he was an independent contractor being for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1276; Dec. Dig. § 332 (3).\* 7 Va.-W. Va. Enc. Dig. 365.]

**2. Master and Servant (§ 321\*)—Injuries to Servant—Independent Contractors.**—Conceding plaintiff to have been an independent contractor working on defendant's premises, defendant was under as great a legal obligation not to fell a tree on him as if he were a servant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1262; Dec. Dig. § 321.\* 7 Va.-W. Va. Enc. Dig. 365.]

**3. Trial (§ 261\*)—Instructions—Requests—Modification:**—Where an incorrect instruction is refused, the court is under no obligation to give a correct modification of it, in the absence of request therefor.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 484, 660, 671, 673, 675; Dec. Dig. § 261.\* 7 Va.-W. Va. Enc. Dig. 708.]

**4. Master and Servant (§ 321\*)—Injuries to Servant—Negligence of Employer.**—Defendant, who had employed plaintiff either as a servant or independent contractor, was negligent in felling a tree without guide ropes and with a weak prop or shore, which was crushed, so that the tree struck plaintiff.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1262; Dec. Dig. § 321.\* 7 Va.-W. Va. Enc. Dig. 365.]

**5. Appeal and Error (§ 1002\*)—Scope of Review—Conflict in Evidence.**—Where there is a conflict in the testimony, the verdict of the jury resolving it is conclusive on the court on appeal.

[Ed. Notes.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.\* 1 Va.-W. Va. Enc. Dig. 620.]

Error to Circuit Court of City of Norfolk.

Action by Anthony Bright against Calvin Peele. Judgment for plaintiff, and defendant prays writ of error. Judgment affirmed.

*S. Burnell Bragg*, of Norfolk, for plaintiff in error.

*Jas. S. Barron*, of Norfolk, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.